

DAVIS WRIGHT TREMAINE LLP

**COX, WOOTTON, GRIFFIN,**

**HANSEN & POULOS LLP**

Gregory W. Poulos (SBN 131428)

Max L. Kelley (SBN 205943)

190 The Embarcadero

San Francisco, CA 94105

Telephone No.: 415-438-4600

Facsimile No.: 415-438-4601

Attorneys for Plaintiff

DEL MAR SEAFOODS, INC.

James P. Walsh, CSB. No. 184620

Gwen Fanger, CSB No. 191161

**DAVIS WRIGHT TREMAINE LLP**

505 Montgomery Street, Suite 800

San Francisco, California 94111-3611

Telephone: (415) 276-6500

Facsimile: (415) 276-6599

budwalsh@dwt.com

Attorneys for Defendants and Claimant

BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and,  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8 foot long fishing vessel, her engines,  
tackle, furniture apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

No. C-07-2952-WHA

**[PROPOSED] JOINT FINAL  
PRETRIAL ORDER**

**Final Pretrial Conference  
May 5, 2008; 2:00 p.m.**

**Trial Date: May 14, 2008**

**Time: 7:30 a.m.**

**Place: Courtroom 9, 19<sup>th</sup> Floor**

Pursuant to Local Rule 16-10(b)(6) and the Court's Guidelines for Trial and Final Pretrial Conference in Civil Bench Trials before the Honorable William Alsup, the parties to the above-entitled action jointly submit the following Proposed Joint Final Pretrial Order ("Proposed Order").

**I. CLAIMS AND DEFENSES TO BE DECIDED**

After the Court's ruling on Plaintiff's Motion for Summary Judgment, the following claims and defenses remain to be decided:

1. Plaintiff Del Mar Seafoods, Inc.'s ("Del Mar") claim that Defendants defaulted under their obligations to make payments to Del Mar under a promissory note (the "Note") secured by a preferred ship mortgage (the "Mortgage");
2. The amount that Defendants owe under the Note and Mortgage;
3. Plaintiff/Counter-Defendant's defenses to Defendants'/Counter-Claimants' claims for wrongful arrest;
4. Plaintiff's claims for attorneys' fees and costs;
5. Barry Cohen's, Christene Cohen's, the Vessel, *in rem*, and Counterclaimant's, the F/V Point Loma Fishing Company, Inc. (collectively, "Defendants'") denial that they defaulted on the note and counterclaims for wrongful arrest, breach of the Note and Mortgage, intentional interference with prospective economic advantage, and negligent interference with prospective economic advantage; and all related defenses pled in Defendants' Answer;
6. Defendants' claims for damages for wrongful or improper arrest, breach of the Note and Mortgage, and intentional and negligent interference with Defendants' prospective economic advantage; and
7. Defendants' claims for attorneys' fees and costs.

**II. RELIEF SOUGHT**

Plaintiff seeks damages in the amount of approximately \$128,750 in principal and \$49,208 in accrued interest, the amounts claimed due under the Note and Mortgage, custodia legis fees and costs, attorneys' fees and costs, and a judicial sale of the Vessel to satisfy any money judgment Plaintiff may obtain.

Defendants seek damages to be determined at trial for lost fishing income, including compensation for all fixed costs for the F/V Point Loma (the "Vessel"), lost net income, not including any variable costs that did not have to be paid while the Vessel was under arrest, and

1 money paid to compensate the captain and crew during the arrest. Defendants also seek  
 2 reimbursement for the expenses that they have incurred related to this litigation not to exceed  
 3 \$5,000, attorneys' fees and costs, and any other relief that the Court deems appropriate and fair,  
 4 including prejudgment interest on the damages caused by the wrongful arrest.

5 The parties will submit motions for payment of attorneys' fees and costs as appropriate if  
 6 the Court decides, after ruling on the parties' claims and defenses, that a party is entitled to  
 7 attorneys' fees and costs.

### 8 **III. STIPULATED FACTS**

9 Plaintiff and Defendants stipulate to the following facts:

#### 10 The Parties

11 1. Plaintiff Del Mar Seafoods, Inc. has been engaged in the fish processing,  
 12 marketing, and retail business since 1989.

13 2. Defendants Barry and Christene Cohen are legally married, although currently  
 14 separated.

15 3. The Vessel is owned by the F/V Point Loma Fishing Company, Inc. ("PLFC"), a  
 16 California subchapter S corporation. Barry and Christene Cohen each own 50% of the shares in  
 17 PLFC. Barry Cohen is the President and manager of PLFC. In 2004, the Cohens transferred  
 18 ownership of the Vessel from themselves to PLFC. The Vessel remains subject to the Mortgage  
 19 following the transfer of ownership to PLFC.

20 4. The Vessel engages in fishing activities off the coast of Northern California.  
 21 Specifically, the Vessel engages in the groundfish fisheries located outside the State of California  
 22 and in the U.S. Exclusive Economic Zone ("EEZ")(from three to 200 nautical miles) and is  
 23 licensed to land its catch only in the State of California. The Vessel's home port is Port San Luis,  
 24 California.

25 5. Del Mar has a valid Preferred Ship Mortgage on the Vessel under 46 U.S.C. §  
 26 31321 *et seq.*

The Relationship of the Parties

6. For at least 10 years, Barry Cohen and Del Mar have done business together. Del Mar employed Barry Cohen from 2004 until 2006 at its processing plant in Watsonville, California.

7. From 1999 to 2004, Del Mar and Barry Cohen engaged in a joint venture for the purpose of operating a fish processing business from a site Mr. Cohen leased at the Port San Luis Pier in Avila Beach, California (the "Avila Beach Joint Venture"). The Avila Beach Joint Venture was based on an oral agreement between Del Mar and Barry Cohen. Del Mar and Barry Cohen each held a 50% interest in the Avila Beach Joint Venture.

8. Del Mar and Barry Cohen signed an Assignment of Joint Venture Interest (the "Assignment") effective October 22, 2004 related to the Avila Beach Joint Venture.

9. In or around 2001, Del Mar and Barry Cohen began planning for a new joint venture in Mexico (the "Mexico Joint Venture"). Barry Cohen and Plaintiff's president, Joe Cappuccio, intended to use the Vessel in connection with the Mexico Joint Venture. Joe Cappuccio intended to purchase a 50% interest in the Vessel and Plaintiff advanced funds to Barry Cohen to upgrade the Vessel. When Plaintiff decided not to purchase a 50% interest in the Vessel, the parties agreed to convert the funds contributed by Plaintiff to upgrade the Vessel, together with other sums, into a loan.

The Note and Mortgage

10. The parties' agreement to convert the funds contributed by Plaintiff into a loan was formalized by the Note and Mortgage.

11. Defendants Barry and Christene Cohen signed the Note, dated October 31 2003, for \$215,000 in favor of Del Mar. The Note is secured by the Mortgage, dated October 31, 2003, on the Vessel that both Barry and Christene Cohen signed.

12. The Note and Mortgage are the only signed written agreements between Plaintiff and Defendants regarding money owed by Defendants. There is no signed written amendment to the Note or the Mortgage.

Payments by Defendants

13. Defendants made a payment to Plaintiff in December, 2004 in the amount of \$5,000.

14. Defendants made a payment to Plaintiff in the amount of \$175,000 by check dated November 10, 2005. The terms of the Note and Mortgage did not require Defendants to make such a payment in that amount at that time. In 2007, Defendants made additional payments on the Note in January (\$2,000), February (\$3,000) and March (\$3,000).

15. At the time of the arrest, Defendants had paid a total of \$188,000 to Plaintiff.

16. Defendants have admitted they owe a balance on the Note of \$27,000.

The Arrest of the Vessel

17. Plaintiff filed a verified complaint against Defendants asserting a right to foreclose on the Mortgage on June 7, 2007 and obtained an *ex parte* order of arrest of the Vessel the same day.

18. The Court vacated the *ex parte* order of arrest of the Vessel on August 17, 2007 finding that Plaintiff lacked probable cause for the arrest.

**IV. TRIABLE ISSUES OF FACT**

The following factual issues are to be decided at trial:

1. Whether the total amount owed under the Note and Mortgage was greater than \$215,000:

a. Were there any subsequent oral modifications or modifications by actual performance of the terms of the Note and Mortgage:

i. Did the parties agree to include other obligations under the Note and Mortgage;

ii. Did the parties modify or otherwise agree to modify the timing of the monthly payments in exchange for Defendants making a payment in the amount of \$175,000; and

iii. Did the parties agree to modify the payment of interest in exchange

1 for Defendants making a payment in the amount of \$175,000.

2 b. Did Plaintiff assign its rights to debts related to the Avila Beach Joint  
3 Venture to Barry Cohen under the Assignment.

4 2. Whether Defendants were in default under the terms of the Note and Mortgage at  
5 the time of the arrest:

6 a. Were any monthly payments on the Note due at the time of the arrest.

7 b. Were Defendants in default as a result of their failure to name Del Mar as a  
8 loss payee on the insurance policies covering the Vessel.

9 3. Whether Plaintiff was entitled to foreclose its maritime lien against the Vessel;

10 4. Were the Defendants in default under the terms of the Mortgage at the time of the  
11 arrest;

12 5. Did Plaintiff arrest the Vessel in bad faith, with malice, or gross negligence;

13 6. At the time of the arrest, did the Defendants have an economic relationship with a  
14 third party;

15 7. If so, at the time of the arrest did Del Mar know of such relationship;

16 8. If so, did Del Mar intentionally engage in conduct designed to interfere with or  
17 disrupt this relationship;

18 9. If so, did the arrest actually interfere with or disrupt such economic relationship;  
19 and

20 10. If so, did Del Mar's conduct that was designed to interfere with or disrupt such  
21 relationship cause damage to Defendants and if so, how much; and

22 11. The amount of Defendants' financial losses because of the arrest, if any.

23 **V. EXHIBIT LIST**

24 The parties' joint exhibit list is attached as Exhibit A to the Proposed Order.

25 **VI. WITNESS LIST**

26 Plaintiff's and Defendants' witness lists are attached as Exhibits B and C, respectively, to  
27 the Proposed Order.

28

DAVIS WRIGHT TREMAINE LLP

Respectfully submitted this 28<sup>th</sup> day of April, 2008.

/s/ Gwen Fanger

James P. Walsh

Gwen Fanger

DAVIS WRIGHT TREMAINE LLP

Attorneys for Defendants BARRY COHEN,  
CHRIS COHEN, F/V POINT LOMA and the  
F/V POINT LOMA FISHING COMPANY,  
INC.

/s/ Max L. Kelley

Gregory W. Poulos

Max L. Kelley

COX, WOOTTON, GRIFFIN, HANSEN &  
POULOS

Attorneys for Plaintiff, DEL MAR  
SEAFOODS, INC.

**IT IS SO ORDERED.**

Dated: May \_\_\_\_, 2008

WILLIAM ALSUP

UNITED STATES DISTRICT JUDGE

# Appendix A



**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**

Gregory W. Poulos (SBN 131428)  
 Max L. Kelley (SBN 205943)  
 190 The Embarcadero  
 San Francisco, CA 94105  
 Telephone No.: 415-438-4600  
 Facsimile No.: 415-438-4601  
 Attorneys for Plaintiff  
 DEL MAR SEAFOODS, INC.

James P. Walsh, CSB. No. 184620

Gwen Fanger, CSB No. 191161

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505 Montgomery Street, Suite 800

San Francisco, California 94111-3611

Telephone: (415) 276-6500

Facsimile: (415) 276-6599

budwalsh@dwt.com

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 the F/V POINT LOMA and Claimant, F/V POINT LOMA Fishing Company, Inc.

## UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**JOINT EXHIBIT LIST**

**Trial Date: May 14, 2008**

**Pretrial Conference: May 5, 2008**

**Time: 2:00 p.m.**

**Place: Courtroom 9, 19<sup>th</sup> Floor**

Pursuant to the Court's Guidelines for Trial and Final Pretrial Conference in Civil Bench

Trials before the Honorable William Alsup, the parties to the above-entitled action jointly submit  
 the following Joint Exhibit List. The parties reserve the right to add any additional exhibits to  
 this list that may be necessary for rebuttal and/or impeachment during the course of trial.

DAVIS WRIGHT TREMAINE LLP

<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>	<b>Date Ident.</b>	<b>Date Admt.</b>	<b>Limitations</b>
1.	Color photograph of the F/V POINT LOMA	DMSI 0065			
2.	Color photograph of the F/V POINT LOMA	DMSI 0067			
3.	F/V POINT LOMA U.S.C.G. Certificate of Documentation	COHEN 00001			
4.	U.S. Groundfish Permit	COHEN 00002			
5.	F/V POINT LOMA Abstract of Title	DMSI 0057-0062			
6.	F/V POINT LOMA Bill of Sale	DMSI 0063-0064			
7.	Promissory Note	DMSI 0098-0100			
8.	First Preferred Mortgage.	DMSI 0101-0110			
9.	Cantrell Memorandum	DMSI 0235-0247			
10.	Asset balance sheets: 10/31/03, 12/31/03	DMSI 0003-0004			
11.	Fax from D. Smith to J. Roggio: Asset Balance Sheet 10/31/03 and Fisherman Advances ledger entries	DMSI 0002, 0008-0013			
12.	Del Mar Balance Sheet (same as 0002 but w/o writing)	DMSI 0176			
13.	Cohen cancelled checks	DMSI 0129-0171			
14.	Journal entry log 12/03	DMSI 0178			
15.	Asset Balance Sheet 1/31/04	DMSI 0179			
16.	Asset Balance Sheet 3/31/04	DMSI 0181			

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<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>	<b>Date Ident.</b>	<b>Date Admt.</b>	<b>Limitations</b>
17.	Asset Balance Sheet 5/31/04	DMSI 0183			
18.	Accounts Payable Trial Balance 10/22/04	DMSI 0005			
19.	General Ledger Detail Report 10/22/04	DMSI 0189			
20.	Accounts Payable Aged Invoice Report 10/21/04	DMSI 0190-0192			
21.	Accounts Payable Trial Balance 10/22/04	DMSI 0193			
22.	Accounts Payable Trial Balance 12/31/04	DMSI 0007			
23.	Accounts Receivable Trial Balance 12/31/04	DMSI 0006			
24.	Olde Port Fisheries Inventory records 10/04	DMSI 0014-0018			
25.	12/22/04 Cohen check (\$5,000)	COHEN 00004			
26.	Del Mar deposit slip 6/24/05	DMSI 0270			
27.	Remittance Advice	DMSI 0296			
28.	Olde Port Fisheries check no. 1158	DMSI 0271			
29.	11/9/05 Cohen check (\$175,000)	COHEN 00005			
30.	Olde Port Fisheries Account Inquiry	DMSI 0195			
31.	Del Mar credit memo: Olde Port Fisheries (Barry Cohen)	DMSI 0196			
32.	Del Mar invoices to Olde Port Fisheries	DMSI 0197-0203			
33.	F/V POINT LOMA Account Inquiry	DMSI 0194			

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Exhibit No.	Description	Bates Range	Date Ident.	Date Admt.	Limitations
34.	1/30/07 Cohen check (\$2,000)	COHEN 00007			
35.	2/15/07 Cohen check (\$3,000)	COHEN 00006			
36.	4/23/07 Cohen check (\$3,000)	COHEN 00008			
37.	11/05 Schedule of Payments	COHEN 00009			
38.	4/30/07 Schedule of Payments	DMSI 0111			
39.	6/27/07 Schedule of Payments	DMSI 0001			
40.	1/30/07 Cohen correspondence to Del Mar	DMSI 0078			
41.	Insurance policies covering the F/V POINT LOMA	COHEN 752-763			
42.	U.S. Marshal final invoice	DMSI 0272			
43.	Nat. Maritime Svcs. invoice	DMSI 0079			
44.	SugarDock LLC invoices	DMSI 0080-0084			
45.	Invoices for attorneys fees	* discuss at pretrial conference			
46.	12/15/05 Cappuccio Assignment	DMSI 0273			
47.	10/22/04 JV Assignment	COHEN 00014-00015			
48.	Order Denying Atty. Fees	DMSI 0274-0280			
49.	1/21/07 Cohen Declaration	DMSI 0281-0295			
50.	Cohen tax records 1999-2001	DMSI 0054-0056			

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<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>	<b>Date Ident.</b>	<b>Date Admt.</b>	<b>Limitations</b>
51.	Cohen tax records 2004-2005	COHEN 927-934			
52.	F/V POINT LOMA monthly trip revenue	COHEN 00676-00677			
53.	F/V POINT LOMA trip breakdown	COHEN 00683-00684			
54.	Del Mar Income Statement summary 1999-2004	DMSI 0019-0020			
55.	Olde Port Fisheries Income Statement 9/30/04	DMSI 0021-0023			
56.	Olde Port Fisheries Balance Sheets 9/30/04	DMSI 0024-0025			
57.	Olde Port Division, Operations spread sheet 2004	DMSI 0026-0027			
58.	Olde Port Fisheries Income Statement 12/31/03	DMSI 0028-0030			
59.	Olde Port Fisheries Balance Sheets 12/31/03	DMSI 0031-0032			
60.	Olde Port Fisheries Income Statement 12/31/02	DMSI 0033-0036			
61.	Olde Port Fisheries Balance Sheets 12/31/02	DMSI 0037-0038			
62.	Olde Port Fisheries Income Statement 12/31/01	DMSI 0039-0041			
63.	Olde Port Fisheries Balance Sheets 12/31/01	DMSI 0042-0043			
64.	Olde Port Fisheries Income Statement 12/31/00	DMSI 0044-0046			
65.	Olde Port Fisheries Balance Sheets 12/31/00	DMSI 0047-0048			
66.	Olde Port Fisheries Income Statement 12/31/99	DMSI 0049-0051			
67.	Olde Port Fisheries Balance Sheets 12/31/99	DMSI 0052-0053			

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<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>	<b>Date Ident.</b>	<b>Date Admt.</b>	<b>Limitations</b>
68.	Olde Port Fisheries Balance Sheet 7/31/03	DMSI 0172			
69.	Olde Port Fisheries Balance Sheet 6/30/03	DMSI 0173			
70.	Olde Port Fisheries Balance Sheet 8/31/03	DMSI 0174			
71.	Olde Port Fisheries Balance Sheet 9/30/03	DMSI 0175			
72.	Olde Port Fisheries Balance Sheet 11/30/03	DMSI 0177			
73.	Olde Port Fisheries Balance Sheet 4/39/03	DMSI 0182			
74.	Olde Port Fisheries Balance Sheet 6/30/03	DMSI 0184			
75.	Olde Port Fisheries Balance Sheet 7/31/04	DMSI 0185			
76.	Olde Port Fisheries Balance Sheet 8/31/04	DMSI 0186			
77.	Olde Port Fisheries Balance Sheet 9/30/04	DMSI 0187			
78.	Del Mar Journal Entry 10/25/04	DMSI 0188			
78.	Declaration of Barry Cohen in Support of Defendants' Motion to Vacate Order of Arrest				
79.	Declaration of Barry Cohen in Support of Defendants' Reply to Plaintiff's Opposition to Motion to Vacate Order of Arrest				
80.	Declaration of Barry Cohen in Support of Defendants' Opposition to Plaintiff's Motion for Reconsideration, etc.				

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Exhibit No.	Description	Bates Range	Date Ident.	Date Admt.	Limitations
81.	Declaration of Barry Cohen in Support of Defendants' Motion for a Protective Order				
82.	Declaration of Christene Cohen in Support of Defendants' Motion for a Protective Order				
83-200	<i>RESERVED</i>				
201.	NOAA letter, dated 7/3/07	COHEN 00003			
202.	Certificate of Revivor,	COHEN 00010			
203.	Settlement Sheets	COHEN 000020, 22, 25, 28, 33, 36, 39, 41, 43, 47, 51, and 55			
204.	Receipts for income and expenses for trips prior to arrest, 13/31/06-6/4/07	COHEN 00016-00055			
205.	Email	COHEN 00056-57			
206.	Calculation of net income by trip, pre and post arrest,	COHEN 00678-718			
207.	Log Trawl Book, 1/06-9/26/07	COHEN 764-835			
208.	Log Trawl sheets, 10/8/07-12/12/07	COHEN 836-842			
209.	Receipts for income and expenses for trip after arrest, 8/31/07-12/13/07	COHEN 843-902			
210.	Travel Expenses to San Francisco, 8/07-1/08	COHEN 903-917			

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<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>	<b>Date Ident.</b>	<b>Date Admt.</b>	<b>Limitations</b>
211.	Payments to captain and crew during arrest	COHEN 918; 920-926			
212.	Travel Expenses to San Francisco, 4/08	COHEN 935			
213.	Plaintiff's Verified Admiralty and Maritime Complaint, C07-2952 WHA (June 7, 2007)				
214.	Warrant for the Arrest of the Vessel, C07-2952 WHA (June 7, 2007)				
215.	Order on Plaintiff Del Mar Seafoods, Inc.'s Ex Parte Application for Arrest of Vessel, C07-2952 WHA (June 7, 2007)				
216.	Order Granting Motion to Vacate Order of Arrest, C07-2952 (August 16, 2007)				
217.	Plaintiff's Responses to Defendants' Requests for Admissions, Set One				
218.	Plaintiff's Responses to Defendants' First Set of Interrogatories				
219.	Declaration of Joe Roggio in Support of Plaintiff's Motion for Summary Judgment or Alternatively, Partial Summary Judgment				
220.	Declaration of Joe Roggio in Support of Plaintiff's Opposition to Motion to Vacate Order of Arrest				
221.	Declaration of Joe Cappuccio in Support of Plaintiff's Opposition to Motion to Vacate Order of Arrest				



Exhibit No.	Description	Bates Range	Date Ident.	Date Admt.	Limitations
222.	Schedule of Payments, Exhibit 27 to deposition of J. Roggio, taken December 13, 2007				
223.	Schedule of Payments, Exhibit 28 to deposition of J. Roggio, taken December 13, 2007				
224-400	<i>RESERVED</i>				

Respectfully submitted this 28<sup>th</sup> day of April, 2008,

/s/ Gwen Fanger

James P. Walsh  
Gwen Fanger  
DAVIS WRIGHT TREMAINE LLP

Attorneys for Defendants BARRY COHEN,  
CHRIS COHEN, F/V POINT LOMA and the  
F/V POINT LOMA FISHING COMPANY,  
INC.

/s/ Max L. Kelley

Gregory W. Poulos  
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COX, WOOTTON, GRIFFIN, HANSEN &  
POULOS

Attorneys for Plaintiff, DEL MAR  
SEAFOODS, INC.

## Appendix B

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**  
Gregory W. Poulos (SBN 131428)  
Max L. Kelley (SBN 205943)  
190 The Embarcadero  
San Francisco, CA 94105  
Telephone No.: 415-438-4600  
Facsimile No.: 415-438-4601

**LAW OFFICES OF RICHARD P. WAGNER**  
Richard P. Wagner (SBN 166792)  
700 Oceangate, Suite 700  
Long Beach, CA 90802  
Telephone: (562) 216-2946  
Facsimile: (562) 216-2960

Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.	)	Case No.: CV 07-02952 WHA
	)	
Plaintiff,	)	<b>JOINT PROPOSED FINAL</b>
	)	<b>PRETRIAL ORDER</b>
vs.	)	
	)	<b>APPENDIX B</b>
BARRY COHEN, CHRIS COHEN (aka	)	
CHRISTENE COHEN), <i>in personam</i> and	)	<b>PLAINTIFF'S WITNESS LIST AND</b>
F/V POINT LOMA, Official Number	)	<b>SUMMARY OF TESTIMONY</b>
515298, a 1968 steel-hulled, 126-gross ton,	)	
70.8- foot long fishing vessel, her engines,	)	
tackle, furniture, apparel, etc., <i>in rem</i> , and	)	
Does 1-10,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
_____	)	
And Related Counterclaims	)	
_____	)	

Pursuant to the Court's Guidelines for Trial and Final Pretrial Conference in Civil  
Bench Trials before the Honorable William Alsup, pg. 2, ¶ 2(a)(iv), Plaintiff Del Mar  
Seafoods, Inc. submits the following witness list and summary of expected testimony.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DelMarSeafoods/2504

1. Joe Roggio

Mr. Roggio will testify, in summary, regarding the nature of the Plaintiff's business, its business dealings with Defendants, including the Mexico and Avila Beach joint ventures, the Cohens' employment with Del Mar, and circumstances surrounding the formation of the Note and Mortgage to formalize the Cohens debts. Mr. Roggio will also provide testimony explaining the history and events surrounding the history of the Note's principal balance and the accumulation of interest. He will also testify regarding Del Mar's state of mind regarding the Defendants' financial situation leading up to and at the time of the arrest, and Del Mar's knowledge, or lack of such knowledge, regarding the Defendants' dealings with other commercial fishing businesses.

2. David Cantrell

Mr. Cantrell will provide testimony regarding the circumstances surrounding Del Mar and Barry Cohen's decision to form a joint venture for commercial fishing in Mexico, the circumstances surrounding the parties' decision to not form the joint venture and the amounts and sources of the debt forming the bases for the original balance of the Note for \$215,000.

3. Joe Cappuccio

Mr. Cappuccio will provide testimony regarding Defendants' business dealings with Del Mar, the circumstances surrounding the formation of the Note and Mortgage, and the additions of debt to the principal balance and the payments made by Defendants. Mr. Cappuccio will also testify regarding Del Mar's state of mind regarding the Defendants' financial situation leading up to and at the time of the arrest, and Del Mar's knowledge, or lack of such knowledge, regarding the Defendants' dealings with other commercial fishing businesses.

4. Barry Cohen

Mr. Cohen will provide testimony regarding the Note and Mortgage and the amount owed.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DelMarSeafoods/2504

1 5. Christene Cohen

2 Ms. Cohen is expected to testify regarding her employment with the Plaintiff, their  
3 relationship through the present time, the Claimant F/V Point Loma Fishing  
4 Company, Inc.'s yearly profit or loss, and her separation from Barry Cohen.

5 6. Michael Cohen

6 Michael Cohen will testify regarding the circumstances and events surrounding the  
7 debts he owed to Del Mar, and Barry Cohen's promise to assume those debts.

8 7. Leonard Cohen

9 Leonard Cohen will testify regarding the circumstances and events surrounding the  
10 debts he owed to Del Mar, and Barry Cohen's promise to assume those debts.

11 8. Harriet Shields

12 Ms. Shields will provide testimony regarding the accounting of the loans Del Mar  
13 made to Barry Cohen.

14 9. Dean Smith

15 Mr. Smith will provide testimony regarding the accounting of the loans Del Mar  
16 made to Barry Cohen.

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COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DelMarSeafoods/2504

## Appendix C

James P. Walsh, CSB. No. 184620  
 Gwen Fanger, CSB No. 191161  
 DAVIS WRIGHT TREMAINE LLP  
 505 Montgomery Street, Suite 800  
 San Francisco, California 94111-3611  
 Telephone: (415) 276-6500  
 Facsimile: (415) 276-6599  
 budwalsh@dwt.com

Attorneys for Defendants and Claimant.  
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**DEFENDANTS' WITNESS LIST**

**Appendix C to  
 Proposed Joint Final Pretrial Order**

**Trial Date: May 14, 2008**

**Pretrial Conference: May 5, 2008**

**Time: 2:00 p.m.**

**Place: Courtroom 9, 19th Floor**

Pursuant to Court's Guidelines for Trial and Final Pretrial Conference in Civil Bench  
 Trials before the Honorable William Alsup, Defendants Barry Cohen, Chris Cohen, and  
 counterclaimant F/V Point Loma, Inc. submit their list of Witnesses for Trial as follows:

1. Barry A. Cohen: Mr. Cohen will testify as to all subjects related to Plaintiff's claims  
 and defenses and Defendants' defenses and counterclaims.
2. Christene Cohen (by deposition): Mrs. Cohen will testify to the relationship of the  
 parties and the formation of the Note and Mortgage.

DAVIS WRIGHT TREMAINE LLP

- 1 3. Captain Dave Kobak: Captain Kobak will testify as to the damages sustained by
- 2 Defendants as a result of the arrest, including but not limited to the number of missed
- 3 fishing trips.
- 4 4. Joe Roggio: Mr. Roggio will testify as to the formation of Note and Mortgage; any
- 5 amendments to Note and Mortgage; the Plaintiff's basis for the arrest of the Vessel;
- 6 and Plaintiff's knowledge of Defendants' fishing activities
- 7 5. Joe Cappuccio: Mr. Cappuccio will testify as to the formation of Note and Mortgage;
- 8 any amendments to Note and Mortgage; the basis for arrest of the Vessel and
- 9 Plaintiff's knowledge Defendants' fishing activities
- 10 6. Dave Cantrell (by deposition): Mr. Cantrell will testify as to the amount of the Note
- 11 and the application of payments on the Note.
- 12 7. Rebuttal witnesses will testify as needed.
- 13

14 DATED this 28<sup>th</sup> day of April, 2008.

15  
16 Respectfully submitted,

17  
18 /s/ Gwen Fanger  
19 James P. Walsh  
20 Gwen Fanger

21 DAVIS WRIGHT TREMAINE LLP  
22 Attorneys for Defendants, BARRY COHEN,  
23 CHRIS COHEN, F/V POINT LOMA and the  
24 F/V POINT LOMA FISHING COMPANY,  
25 INC.  
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